(32)

Supreme Court of the United States

OCTOBER TERM 1944

No. 360

UNITED FRUIT COMPANY,

Petitioner,

against

HARRY NEWMAN, FREDERICK BATCHELOR, JUAN URIBE, CRESCENCIO MARTIN, RAMON MOSQUERO, MARIO LEFLER and FRANCISCO MARTINEZ,

Respondents.

BRIEF OF RESPONDENTS IN OPPOSITION TO PETITION FOR CERTIORARI

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HERMAN ROSENFELD,
RUTH H. SASLOW,
on the Brief.

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Question Involved

The petition raises the question whether the decisions in the courts below are in conflict with decisions of this court and those of other circuits.

POINT I

The construction placed upon Section 594 by this court supports the decisions of the courts below.

From early times Congress has adopted a protective attitude towards seamen. Legislation enacted with respect to their service on board vessels was intendd for their protection and for the enlargement of their rights.

46 U. S. C. A. Section 594 is one of these statutes. In enacting this statute Congress apparently had in mind the then known historic fact that seamen were often unemployed for great periods of time; that when they finally did obtain employment they frequently had to leave the lodging houses in which they lived, even though they may already have paid their rent for the entire week; and that the seamen usually then had to go through the trouble of packing all their personal belongings to take them on board ship. When a seaman was, therefore, offered a berth aboard a vessel which contemplated a short voyage he might, and often did, decide that the trouble and expense were not worth the wages which could be earned on such a short voyage—and he frequently preferred to wait until an opportunity presented itself to work aboard a vessel offering longer employment.

Congress, therefore, provided by Section 4527 of the Revised Statutes (46 U. S. C. A., §594) that where a shipowner induces seamen to work aboard his ship, and represents by the shipping articles that they are undertaking a foreign voyage to a specific port, he may not thereafter discharge them without their consent, and without fault on their part. It is declared to be our policy that where a shipowner does violate this provision of law, advertently or inadvertently, and even though with the best of intentions and without actual fault on the employer's part, he is, nevertheless, required to pay an additional month's wages to the seamen thus discharged, such payment being in lieu of damages.

The payment of such an extra month's wages, in cases where seamen are discharged without their fault before earning one month's wages, and where the articles have not yet expired, has thus, by law, become part of the operating expense of every shipowner.

The petitioner attempts to place a strained and distorted meaning on the statute in question. However, this construction is amply refuted by the opinion of Judge

Rifkind in the District Court in the instant case. He stated:

> "In *The Steel Trader*, the court recited the legislative history of the statute and quoted the statement of the Representative who reported the bill to the House of Representatives, 'The bill is substantially the Shipping-Commissioner's Act of England with such changes as have been deemed necessary to adapt it to this country * * *.' The clause relied on by the respondent reads somewhat different in the English statute, thus: 'May, on adducing evidence as the Court hearing the case deems satisfactory of his having been so improperly discharged as aforesaid, recover' the compensation specified. The 'so' and the 'as aforesaid' can refer only to absence of fault and absence of consent on the part of the seaman. In other words, a discharge before the commencement of a voyage or before one month's wages are earned is improper if the seaman withholds his consent and is without fault.
>
> While the italicized words do not appear in §4527, nevertheless they may be read into it in order to give effect to the legislative intent to adopt 'substantially the Shipping-Commissioner's Act of England'. Such construction of the statute is consonant with its purpose as defined by the Supreme Court. In The Steel Trader, the court held that compliance with the statute by the payment of one month's wages in addition to the wages actually earned 'satisfies all liability for breach of contract of employment by wrongful discharge'. It would be strange if a statute designed for the benefit of seamen should not only deprive them of the ordinary claim for breach of contract by wrongful discharge but should leave the employer in possession of all defenses to the statutory remedy for one month's wages as if it were a claim for a breach of contract. Such a construction would be inconsistent with the historic solicitude of the courts for the rights of seamen."

Almost the identical situation as in the instant case was presented to the court in *Florentine* v. *Grace Lines, Inc.*, 1942 A. M. C. 126 (App. Term, 1st Dept.), where seamen

were discharged in order to sell the steamship *Nightingale* to the Maritime Commission for purposes of transfer to the British Government under the provisions of the Lend-Lease Act. The Appellate Term awarded the seamen an extra month's wages pursuant to 46 U. S. C. A. §594.

The most recent case involving this statute was *Jorgenson* v. *Standard Oil Company,* 1940 A. M. C. 1169 (Mun. Ct.), aff'd App. Term (1st Dept., Dec. 18, 1940), aff'd App. Div. (1st Dept., Oct. 10, 1941); cert. den. by U. S. Supreme Court in 315 U. S. 819 (Mar. 16, 1942). There, while an American vessel, the *W. C. Teagle,* was in a foreign port, it was sold, and its crew discharged, before earning one month's wages. The employer there gave the seamen only return transportation, in addition to the wages which they had earned. An action was instituted on behalf of the crew for an extra month's wages, relying upon the same statute as that relied upon herein. One of the grounds on which the company there sought to avoid liability was that it had cancelled the voyage in conformity with the spirit of the Neutrality Act, which was intended at that time to keep American seamen and vessels out of war zone areas. The Municipal Court held that defense, as well as others raised, to be insufficient as a matter of law, and upon appeal both the Appellate Term and the Appellate Division of the First Department affirmed, and certiorari was denied by the United States Supreme Court.

Similarly, in the *Great Canton,* 299 Fed. 953 (E. D. N. Y., 1924), the court held that the sale of a vessel, even without an owner's voluntary consent, does not constitute a defense to an action for an extra month's wages under the particular statute. There a crew had been discharged in a domestic port by reason of the fact that their ship was sold on execution prior to the expiration of the voyage. Not only did the court award extra wages under Section 4527 of the Revised Statutes (46 U. S. C. A. §594), but, in addition, the seamen were awarded the penalties provided by Section 4529 of the Revised Statutes (46 U. S.

C. A. §596), to wit, two days' pay for every day they were made to wait before receiving their extra month's wages.

In the case of *Arwine* v. *Alaska S.S. Co.* (1937), 65 P. (2d) 695, 189 Wash. 437, the court had occasion to consider the effect of Revised Statutes, Section 4527, in awarding the crew a month's wages. The Supreme Court of Washington, by Mr. Justice Robinson, stated at page 696:

> "We think, however, that the statute does not provide a penalty, but merely fixes the seamen's measure of recovery when his contract of employment is brached without his fault. The language seems too clear and definite to admit of any other construction. In any event, it was so construed in The Steel Trader, 275 U. S. 388, reported in 48 Sup. Ct. 162, 72 L. Ed. 326, under the U. S. Steel Products Co. v. Adamas, and we are bound by that decision.
>
> The statute under discussion is one of a number of Federal statutes giving seamen rather unusual rights and remedies with respect to wages. * * *
>
> These wage statutes were enacted upon the theory that seamen needed special protection and they have been liberally construed in their favor for the same reason. In fact, at the time of their enactment, seamen were regarded as being in need of a kind of guardianship, because seamen are repeatedly spoken of in text books and law reviews as 'wards of the admiralty'. It is true that seamen have since acquired other and very efficient guardianship, particularly as regards wages, but these statutes are still in effect and must be enforced according to their original intent."

The statute was also considered in *Calvin* v. *Huntley*, 176 Mass. 29, 50 N. E. 435 (1901). (This decision has been expressly approved and quoted from by the United States Supreme Court in *The Steel Trader*, 275 U. S. 388, 48 Sup. Ct. 162 [1928].) In that case the Supreme Judicial Court of Massachusetts held that an award under Section 4527 of the Revised Statutes is not a penalty and that, therefore, an action to recover same may be commenced

in the State courts. The court there also pointed out that the statute fixes a sum equal to one month's wages as the sum to be paid for the failure to perform the contract, Hammond, J., stating at page 435:

> "It is to be observed that the language of the section is not that ordinarily used in a penal statute. Neither the word 'penalty' nor 'forfeiture' is in it. Moreover it does not provide punishment for the commission of a criminal offense, nor for the neglect of a statutory duty, nor even for the neglect of a duty in the performance of which the public as such may be supposed to have an interest. It speaks not of punishment, but of compensation. Its object is to protect the seamen from loss rather than punish the master for discharging him. The remedy is given to the seaman alone * * *."

POINT II

There is no conflict between the Second and Fourth Circuits.

The cases cited by petitioner in support of its contention that there is a conflict between circuits are not in point. In those cases the question involved concerned contractual rights rather than those arising out of a statute. In addition, the contracts themselves contained clauses with respect to acts of princes and other force majeur which would excuse performance. It is petitioner's contention that the statute provides a contractual right which should be subject to all defenses, including the defense of impossibility. It also contends that the requisitioning of the vessel made impossible the performance of the employment contract. However, petitioner ignores the fact that at the time the seamen were engaged there existed many statutes authorizing the government to requisition vessels without the owner's consent.

Despite the fact that the war abroad had been raging for many months prior to the time when the parties herein entered into the employment contract, nevertheless the owner of the vessel took no precaution to limit its liability to the crew in the event of requisition by the government under existing statutes, which would make it impossible for petitioner to continue the voyage. Faced with these known facts the company undertook absolutely, by written contract (the shipping articles), to give the seamen employment for a certain stipulated voyage. It never notified the seamen that, even prior to the signing on, it had already learned that the steamship *Quiriqua* was to be requisitioned.

In this connection it is interesting to note the case of *Societe Anonyme et al.* v. *Bull Insular Lines, Inc.*, 276 Fed. 783 (C. C. A., 1st, 1921), where a steamship company was held liable for a failure to perform its contract due to war conditions. Certiorari was denied in the Supreme Court (258 U. S. 621). In that case Circuit Judge Anderson stated at page 785:

> "The contract was made in July, 1916, after the European War had been flagrant for almost two years. The parties must have known of the increasing hazardous possibility, if not probability, that the United States would become, as it subsequently was, involved in the war. The contract was made during the war, in contemplation of changing war conditions."

See, also, *Brevard Tannin Co.* v. *J. F. Mosser Co.*, 288 Fed. 725 (C. C. A., 4th, 1923), where Circuit Judge Taft, at page 727, stated:

> "Defendant, in its answer, interposed defenses that the performance had become impossible because of a government embargo and war conditions. The Court charged the jury that those constituted no defense. The promise of the defendant was without exception or condition on that head. The contract was made during the war. The District Court was clearly right. Day v. United States, 245 U. S. 159, 161, 38 Sup. Ct.

57, 62 L. Ed. 219; Carnegie Steel Co. v. United States, 240 U. S. 156, 164, 36 Sup. Ct. 342, 60 L. Ed. 576; Globe Refining Co. v. Lands Cotton Oil Co., 190 U. S. 540, 543, 544, 23 Sup. Ct. 754, 47 L. Ed. 1171; Jacksonville R'way Co. v. Hooper, 160 U. S. 514, 527, 16 Sup. Ct. 379, 40 L. Ed. 515; The Horriman, 9 Wall. 161, 172, 19 L. Ed. 629; Berg v. Erickson, 234 Fed. 817, 148 C. C. A. 415, L. R. A. 1917 A. 648."

See, also, *Campbell* v. *Uncle Sam,* Cir. Ct. Cal., Fed. Cas. No. 2372, where a crew was discharged in violation of the terms of their shipping articles and sued for an extra month's wages. The shipowner defended on the ground that the voyage was scheduled for Nicaragua, which was then in such an unsettled military state of affairs that considerations of safety required the voyage to be cancelled. The Court held that the condition of that country having been the same at the time the seamen were engaged, they were entitled to recover extra wages for the breach of their contract of employment.

The respondent stresses the point that the vessel having been requisitioned, it was impossible to perform the employment contract and the respondent was free from any fault. The question here, however, is not whether the unexpected requisitioning of the vessel places the owner at fault in discharging the personnel hired by him but rather whether the hiring of seamen with knowledge of the impending requisition was improper. In the instant case there was no sudden or unexpected change of law or of circumstances after the contract was entered into. At the time the contract was entered into the requisitioning statute was long in effect, the war was on, an emergency had already been declared, and the company had already been notified on the day previous that this vessel was to be requisitioned. Nevertheless, it saw fit not to notify respondents of this contingency and to enter into an absolute contract with these seamen, promising them employment for a foreign voyage.

CONCLUSION

Since the discharge herein was before one month's wages had been earned, without fault on the part of the crew, and in contravention of the articles, it falls squarely within the prohibitions contained in Section 4527 of the Revised Statutes (46 U. S. C., §594). There being no valid defense, a decree was properly granted in favor of the seamen.

The petition should be denied.

Respectfully submitted,

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